

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ATHENS DIVISION

MERIAL LIMITED and  
MERIAL S.A.S.,

Plaintiffs and Counterclaim-Defendants,

v.

VELCERA, INC. and FIDOPHARM,  
INC.,

Defendants and Counterclaim-Plaintiffs.

Case No. 3:11-cv-00157-CDL

**DEFENDANTS AND COUNTERCLAIM-PLAINTIFFS' NOTICE OF INTENT  
TO RESPOND TO EMERGENCY MOTION TO COMPEL PRODUCTION OF  
DOCUMENTS AND THINGS**

Velcera, Inc. and Fidopharm, Inc. (collectively, "Velcera") respectfully wish to advise the Court of their intent to respond to the March 21, 2012 Emergency Motion to Compel Production of Documents and Things [Doc. No. 38] filed by Merial Limited and Merial S.A.S. (collectively, "Merial").<sup>1</sup> Merial's "emergency" motion is nothing more than a motion to compel which is otherwise improper and premature.

Merial has failed and refused to meet and confer as required by Fed. R. Civ. P. 37 and Local Rule 37 prior to the filing of the motion. **Two days prior to Merial filing the motion** counsel for Velcera offered to meet and confer as contemplated by Rule 37 and discuss Velcera's document production with counsel for Merial. (See Exhibit A to Merial's motion, p. 3). In fact Velcera proposed Thursday March 22, 2012 as a suitable and immediate date for the parties to

---

<sup>1</sup> This is the second so-called "emergency" motion filed by Merial in this case.

come together in an effort to resolve all discovery issues. (See Exhibit A, p. 3) It is the intent of Velcera to resolve all discovery issues if possible and not unnecessarily waste the court's time with matters that should be resolved amongst the parties.<sup>2</sup>

Velcera intends to file its response to Merial's motion no later than 15 days from the filing of the motion, or April 5, 2012. Velcera's local counsel Thomas Gristina is scheduled to be out of the country beginning March 21, 2012 through March 27, 2012 creating the additional need to have until April 5, 2012 to respond in the event the parties are not able to resolve the issues. Of course, should the court order an earlier response time Velcera will comply as best it can.

---

<sup>2</sup> Velcera points out that it understands and appreciates the courts reluctance to become involved in discovery disputes and desires to have a meaningful dialogue with counsel for Merial in order to address any discovery matters and would like to seek Court involvement as a last resort.

Respectfully submitted, this 21<sup>th</sup> day of March, 2012.

PAGE, SCRANTOM, SPROUSE,  
TUCKER & FORD, P.C.

By: /s/ James C. Clark, Jr.

William L. Tucker  
(wlt@psstf.com)  
Georgia Bar No. 718050  
James C. Clark, Jr.  
(jcc@psstf.com)  
Georgia Bar No. 127145  
Thomas F. Gristina  
(tfg@psstf.com)  
Georgia Bar No. 452454  
Synovus Centre  
1111 Bay Avenue, 3rd Floor  
Columbus, GA 31901  
Tel.: (706) 324-0251  
Fax: (706) 596-9992

Joseph D. Wargo  
(jwargo@wargofrench.com)  
Georgia Bar No. 355045  
Michael S. French  
([mfrench@wargofrench.com](mailto:mfrench@wargofrench.com))  
WARGO & FRENCH LLP  
Georgia Bar No. 276680  
999 Peachtree Street, NE, 26th Floor  
Atlanta, GA 30309  
Tel: (404) 853-1500  
Fax: (404) 853-1501

Bruce P. Keller\*  
(bpkeller@debevoise.com)  
David H. Bernstein\*  
(dhbernstein@debevoise.com)  
DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, New York 10022  
Tel: (212) 909-6000  
Fax: (212) 521-7696  
\* Admitted pro hac vice

*Counsel for Defendants  
and Counterclaim-Plaintiffs  
Velcera, Inc. and FidoPharm, Inc.*

**CERTIFICATE OF SERVICE**

I do hereby certify that I am counsel for Defendants and Counterclaim-Plaintiffs and that on this date, I filed the foregoing document, DEFENDANTS' AND COUNTERCLAIM-PLAINTIFFS' NOTICE OF INTENT TO RESPOND TO EMERGENCY MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND THINGS, using the CM/ECF system, which will automatically send notification of such filing

Frank G. Smith, III  
Jason D. Rosenberg  
Kitty Bina  
ALSTON & BIRD LLP  
1201 West Peachtree Street  
Atlanta, GA 30309-3424  
Tel.: (404) 881-7000  
Fax: (404) 881-7777  
frank.smith@alston.com  
jason.rosenberg@alston.com  
[kitty.bina@alston.com](mailto:kitty.bina@alston.com)

Judy Jarecki-Black, Ph.D.  
MERIAL LIMITED  
3239 Satellite Blvd.  
Duluth, GA 30096-4640  
Tel.: 678.638.3805  
Fax: 678.638.3350  
[judy.jarecki@merial.com](mailto:judy.jarecki@merial.com)

Edward D. Tolley, Esq.  
COOK NOELL TOLLEY & BATES LLP  
Georgia Bar No. 714300  
304 East Washington Street  
Athens, GA 30601  
Tel.: 706.549.6111  
Fax: 706.548.0956  
[etolley@mindspring.com](mailto:etolley@mindspring.com)

J. Patrick Elsevier, Ph.D.  
JONES DAY  
12265 El Camino Real, Suite 200  
San Diego, CA 92130  
Tel.: (858) 314-1200  
Fax: (858) 314-1150  
[jpelsevier@jonesday.com](mailto:jpelsevier@jonesday.com)

This 21<sup>th</sup> day of March, 2012.

/s/James C. Clark, Jr.  
Counsel for Defendants and Counterclaim-Plaintiffs